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| Title/Style of Cause: | Juan Garcia Cruz and Santiago Sanchez Silvestre v. Mexico |
| Doc. Type: | Decision |
| Decided by: | President: Jose Zalaquett; First Vice-President: Clare K. Roberts; Second Vice-President: Susana Villaran; Commissioners: Robert K. Goldman, Julio Prado Vallejo. |
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| Represented by: | APPLICANTS: Legal Services and Research and Juridical Studies and the Center for Justice and International Law |
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I. SUMMARY

1. On May 10, 2000 the Inter-American Commission on Human Rights (“the Inter-American Commission” or “the IACHR”) received a complaint lodged by Legal Services and Research and Juridical Studies and the Center for Justice and International Law (SLIEJ and CEJIL, hereinafter, jointly, “the petitioners”), alleging the international liability of the United Mexican States (“the State”) for the illegal detention and torture of Juan García Cruz and Santiago Sánchez Silvestre, as well as their subsequent sentencing to three years’ imprisonment in a trial that failed to meet the standards of due process, including the use of a confession obtained under torture. Subsequent to the filing of the petition, both persons were sentenced to 30 years’ imprisonment for homicide in another trial, using the same confession the petitioners allege was obtained under torture. The petitioners also claim that the Mexican State is internationally liable for failing to investigate and punish the reported facts.

2. The petitioners allege that the reported facts constitute a violation of a number of provisions of the American Convention on Human Rights (hereinafter the “American Convention”): the right to personal integrity (Article 5); personal freedom (Article 7); judicial guarantees (Article 8); and judicial protection (Article 25). They also allege that all the requirements for admissibility under the American Convention have been met. For its part, the Mexican State maintains that there have been no violations of the American Convention because Mr. García Cruz and Mr. Sánchez Silvestre had access to a number of courts and proceedings in which the standards of due process were observed, their right to a defense was respected, it was not established that they were tortured, and their judicial sentence has the force of *res judicata*, which cannot be revised by the IACHR. The Mexican State argues that no violation of the

American Convention exists because the facts of the report have not been demonstrated. It also alleges that domestic remedies have not been exhausted with respect to the reported claims of torture, since a preliminary inquiry was initiated to investigate said claims. Consequently, the State requests that the Inter-American Commission declare the petition inadmissible.

3. Without pre-judging the merits of the case, the IACHR finds in this report that the case is admissible because it meets the requirements of Articles 46 and 47 of the American Convention, hence the decision by the Inter-American Commission to notify the parties of its decision and continue to review the merits of the alleged violation of Articles 5, 7, 8, and 25 of the American Convention; and Articles 1, 6, 8, and 10 of the Inter-American Convention to Prevent and Punish Torture.

II. PROCEEDINGS BEFORE THE IACHR

4. The Inter-American Commission transmitted the pertinent parts of the petition to the Mexican State on June 2, 2000 and requested information by the deadline established in that proceeding.[FN1] The parties continued to submit their comments and additional information until the Inter-American Commission considered that the position of each party was sufficiently clear.[FN2]

[FN1] The Rules of Procedure of the IACHR in effect from April 8, 1980 to May 1, 2001 provided in Article 34(5) that “the Commission shall ask the Government in question to provide the requested information within 90 days of the date on which the request is made.”

[FN2] The Mexican State replied by note of September 1, 2000, the pertinent parts of which were transmitted to the petitioners on September 18 of that year. On October 18, 2000, the petitioners requested an extension, which was granted by the Inter-American Commission on October 26, 2000 for 15 days. On November 13, 2000, the petitioners submitted a communication with their comments, which was received on December 7, 2000 and transmitted to the State on November 13 of that year. On January 12, 2001, the State requested a postponement, granted on the 19th of that month for 30 days. On February 20, 2001 the Mexican State requested a second postponement, which was granted on March 26, 2001 for 30 days. On April 24, the Mexican State requested another extension, granted on May 30, 2001 for one month. The information from the State was received on July 3, 2001 and was made known to the petitioners on the 24th of that month. On August 10, 2001, the petitioners requested a hearing, which could not be scheduled at that time, as they were informed by the IACHR on August 27, 2001. On August 24, 2001 the petitioners presented additional information, which was brought to the attention of the Mexican State on September 28 of that year. On November 2, 2001, the State offered additional information, which was transmitted to the petitioners on the 16th of that month. On December 17, 2001, the petitioners sent their comments, which were forwarded to the State on the 19th of that month. A new request for a hearing was received from the petitioners on January 18, 2002. On January 30, 2002, the Inter-American Commission forwarded to the petitioners the information from the Mexican State dated January 23, 2002; on February 21 of that year, the IACHR communicated to the petitioners that it would not be possible to schedule a hearing on the case. On February 28, 2002, the petitioners sent additional information, which was made known to the State on March 25, 2002. On August 23, 2002, the petitioners submitted

additional information, which was transmitted to the Mexican State on October 3 of that year. The State sent comments in a note dated December 9, 2002. The petitioners requested a hearing on admissibility on January 3, 2003. On January 8, 2003, the Inter-American Commission forwarded the most recent communication from the State to the petitioners. On February 5, 2003, the IACHR reported to the petitioners that it would not be possible to hold a hearing of the case during the 117th regular session. On February 10, 2003, the petitioners sent additional information, which was communicated to the Mexican State on May 15, 2003.

III. POSITIONS OF THE PARTIES ON ADMISSIBILITY

A. The petitioners

5. Regarding the facts, the petitioners maintain that on June 6, 1997 the residence of Mr. Juan García Cruz and Mr. Santiago Sánchez Silvestre was raided by officers of the Judicial Police of the Federal District of Mexico without a search warrant, the officers beat them then took them to the facilities at the Attorney General's Office of the Federal District (PGJDF). According to the report, the police continued to beat Mr. García Cruz and Mr. Sánchez Silvestre and threatened to kill them if they did not plead guilty to crimes they had not committed. They also maintain that their injuries were verified by the Expert Services Department of the PGJDF, and that the detainees were not allowed outside contact for two days before appearing before the judge. In their statements to the courts, both men said that they had suffered physical and psychological torture at the facilities in the Attorney General's Office and that they had been forced to sign blank sheets. Notwithstanding, they were sentenced to three years for "carrying firearms reserved for the exclusive use of the Army, Navy, or Air Force."

6. The petitioners allege that the public defenders assigned to Mr. García Cruz and Mr. Sánchez Silvestre failed to perform their duty to give them a proper defense, submitted no evidence, and limited themselves to formally following the proceedings, to the detriment of the accused. Despite the subsequent intervention of a private lawyer in the defense of Mr. García Cruz and Mr. Sánchez Silvestre, the magistrates refused to admit the evidence that would prove their innocence and instead upheld the confessions obtained under torture.

7. The petitioners claim that the waiver of exhaustion of domestic remedies provided in Article 46(2)(a) of the American Convention is applicable due to the ineffectiveness of the appeals made against the sentence of the lower court and the appeal for amparo presented on behalf of the condemned men. In respect of the acts of torture, the petitioners invoke the exception in Article 46(2)(c), in light of the fact that two years had elapsed since the Attorney General's Office was made aware of the facts and had failed to conduct an investigation. Furthermore, they maintain that this inaction has left them completely defenseless because they have not been able to disprove the accusation that led to the illegal sentence.

8. Regarding the deadline for filing, the petitioners indicate that the last remedy they had for attempting to resolve the situation was exhausted with the judgment of November 11, 1999 of the Third Collegiate Circuit Court of the Federal District. Therefore, the date of presentation of

the petition to the IACHR meets the requirements of Article 46(1)(b) of the American Convention.

B. The State

9. The Mexican State responded to the petition with an analysis of each of the judicial proceedings. Regarding the actions of the lower court judge, it affirms that “the preliminary statements of the accused were taken in accordance with the law” and that “they were first assisted by the assigned public defender and then by private defenders.” [FN3] The State alleges that “all the proceedings in criminal case No. 66/97 were conducted in strict observance of the law in accordance with federal criminal law procedure.” [FN4] In respect of the actions of the public defenders, it maintains that “they submitted relevant evidence in a timely and proper manner, and provided confrontation of evidence to which the subjects were entitled under the Constitution, with the relevant questioning at the time the evidence was aired;” and that “if the defendants did not officially declare to their defenders that they had been allegedly tortured, said defenders could in no way be responsible for supposedly “acting passively as the petitioners affirm.”[FN5]

[FN3] Communication from the Mexican State dated September 1, 2000, pg. 1.

[FN4] *Idem*, pg. 2.

[FN5] *Idem*, pg. 3.

10. According to the Mexican State, the appeal court limited itself to determining the probative value of the statements by the defendants but did not rule on the matter of torture “because it was not part of the appeal case” and despite the fact that Mr. García Cruz’s and Mr. Sánchez Silvestre’s injuries had indeed been documented in the case file, “no evidence was presented to demonstrate that they had been inflicted by their captors to force them to make incriminating statements.” Thus, the court cannot be charged with serious omissions in the defense of the accused, therefore, it considers groundless the demand for a reversal of the proceedings. Finally, the State maintains that the court that heard the amparo proceedings “acted within the bounds of the law” and did not violate the human rights of Juan García Cruz and Santiago Sánchez Silvestre.[FN6]

[FN6] The State summarizes the action of the Third Collegiate Criminal Court of the First Circuit as follows:

It should be noted that in the action for amparo under reference, it was taken into account that the defendants and their attorneys had been informed in a timely manner of the grounds for the proceedings and the reason for the accusation, as well as the names of the persons that had made depositions against them. They were allowed to appoint a defense in accordance with the law; legally proffered evidence was admitted and aired; the information they needed for their defense was provided to them; the hearing before the court took place in accordance with the law and with the parties present; and both in the judgment of the lower court and in the final judgment on

appeal, a sentence of formal imprisonment was handed down for the crime established in the proceedings.

Communication from the Mexican State dated September 1, 2000, pg. 5.

11. Based on these allegations, the Mexican State maintains that in this case, there have been no human rights violations because “the actions of the Federal Judiciary in hearing and deciding the case strictly adhered to the individual guarantees provided both in the Political Constitution of the United Mexican States and in the American Convention on Human Rights”.^[FN7] It adds that Mr. García Cruz and Mr. Sánchez Silvestre failed to present evidence to disprove the accusations against them and that “in any legal system, those who make groundless claims to be right cannot be so adjudged, only those who provide irrefutable and unquestionable evidence of their arguments.” ^[FN8] Lastly, the State maintains that the different courts that heard the case found García Cruz and Sánchez Silvestre guilty, therefore the matter is *res judicata* and the IACHR must not act as a fourth level of appeal in addition to domestic jurisdictions. Therefore the Mexican State requests that the IACHR declare the petition inadmissible as it does not represent any possible human rights violations.

[FN7] *Idem*, pg. 6.

[FN8] *Idem*.

IV. ANALYSIS

A. Competence *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci* of the Inter-American Commission

12. The petitioners are entitled under Article 44 of the American Convention to lodge complaints with the IACHR. The petition states that the alleged victims are individuals in whose regard Mexico has undertaken to respect and guarantee the rights established in the American Convention. As for the State, the Commission notes that Mexico has been a party to the American Convention since March 24, 1981, when it deposited its instrument of ratification. The Commission therefore has competence *ratione personae* to review the petition.

13. The IACHR has competence *ratione loci* to hear the petition because it alleges that human rights protected in the American Convention were violated in the territory of Mexico, a State party to that treaty. Similarly, the Inter-American Commission has competence *ratione temporis* because the obligation to respect and guarantee the rights protected in the American Convention was already in effect for the State on the date on which the facts stated in the petition allegedly took place. Finally, the Commission is competent *ratione materiae*, given that the petition reports violations of human rights protected by the American Convention.

B. Other requirements for admissibility of the petition

a. Exhaustion of domestic remedies

14. Article 46(1)(a) of the American Convention provides that the admissibility of a petition presented to the Commission shall be subject to the requirement "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;". Article 46(2) of the Convention establishes three potential situations in which the rule on exhaustion of domestic remedies does not apply: a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

15. In respect of the criminal proceedings against Mr. García Cruz and Mr. Sánchez Silvestre, the petitioners allege that the domestic remedies in Mexico have been ineffective; regarding investigation into the allegations of torture, they maintain that there has been an unwarranted delay. For its part, the State did not initially argue noncompliance with the exhaustion requirement, but it later referred to a second judicial proceeding started in 1997 against Mr. García Cruz and Mr. Sánchez Silvestre. The State explains that the latter proceeding was based on the fact that "in the same statements made when they surrendered under questioning, which gave rise to the suit in question, Mr. Juan García Cruz and Mr. Santiago Sánchez Silvestre spoke about their participation in a shoot out in December 1996, which resulted in the death of a police officer of the State of Mexico".[FN9] Consequently, the State requests that the Inter-American Commission declare the case inadmissible for failure to exhaust domestic remedies in the part of the petition that refers to the second trial for homicide, which was pending at the time of the second communication to the IACHR.

[FN9] Communication from the State dated July 3, 2001, pg. 2.

16. When a State alleges that there has been no exhaustion of domestic remedies, it bears the burden of proof to show which ones must be exhausted and to demonstrate their effectiveness.[FN10] In that case, the petitioners then bear the burden of proving that the remedies were exhausted or that one of the exceptions in Article 46(2) of the American Convention applies.

[FN10] Inter-American Court of Human Rights, Velásquez Rodríguez Case, judgment on preliminary exceptions cited, para. 88. See also, Fairén Garbi and Solís Corrales Case, Preliminary Exceptions, Judgment of June 26, 1987, Series C No. 2, para. 8; Godínez Cruz Case, Preliminary Exceptions, Judgment of June 26, 1987, Series C No. 3, para. 90; Gangaram Panday Case, Preliminary Exceptions, Judgment of December 4, 1991, Series C No.12, para. 38; Neira Alegría et. al Case, Preliminary Exceptions, Judgment of December 11, 1991, Series C No.13, para. 30; Castillo Páez Case, Preliminary Exceptions, Judgment of January 30, 1996, Series C No. 24, para. 40; Loayza Tamayo Case, Preliminary Exceptions, Judgment of January 31, 1996, Series C No. 25, para. 40; Exceptions to Exhaustion of Domestic Remedies (Art. 46.1, 46.2.a and

46.2.b American Convention on Human Rights), Advisory Opinion OC-11/90 of August 10, 1990, Series A No.11, para. 41.

17. In this case, the IACHR considers that it is not possible to separate the arguments in fact and in law referring to the case on bearing firearms from the second proceeding referring to the homicide of which Mr. García Cruz and Mr. Sánchez Silvestre were accused. The legal position of both persons in the two proceedings is based on the statement that was made--according to the petitioners, which was not contested by the State--while they were held incommunicado at the PGJDF facilities without access to an attorney. Therefore, the determination of the Inter-American Commission with respect to the first of the aforementioned proceedings will necessarily affect the second one.

18. Without entering into an analysis of the arguments put forward by the parties on the alleged violation of judicial guarantees and judicial protection, the Inter-American Commission observes, in a preliminary manner, that at the time this report was approved, six years had gone by since June 1997 when Mr. García Cruz and Mr. Sanchez's injuries were detected and this was reported to the judicial authorities. The investigation of the allegations of torture, according to the findings in the case, did not begin until March 2002 and there is no indication that it would have been completed by the time this report was adopted.

19. In light of the foregoing and of the findings in the case file, the Inter-American Commission establishes—for the purposes of admissibility—that there has been an unwarranted delay on the part of the Mexican jurisdictional authorities in reaching a decision on the allegations. Consequently, the IACHR waives the exhaustion of domestic remedies, as provided in Article 46(2)(c) of the American Convention.

20. The Inter-American Court of Human Rights has established that invoking exceptions to the rule of exhaustion of domestic remedies envisaged in Article 46(2) is closely linked to the determination of possible violations of certain rights laid down in the American Convention, such as the right to due process and judicial protection established in Articles 8 and 25.[FN11]

[FN11] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Preliminary Exceptions, Judgment of June 26, 1987, Series C No. 1, para 91. See also, see Inter-American Court of Human Rights, "Judicial Guarantees in States of Emergency" (Arts. 27.2, 25, and 8 of the American Convention on Human Rights)", Advisory Opinion OC-9/87 of October 6, 1987, Series A No. 9, para. 24.

21. However, the content of Article 46(2), by its nature and purpose, is independent of the substantive provisions of the American Convention. Therefore, any determination regarding the applicability of exceptions to the rule on exhausting domestic remedies to the case under reference should be carried out prior to and separate from the review of the merits of the case, since the parameters for judgment are different from those used to determine whether Articles 8 and 25 of the Convention have been violated. The causes and effects that prevented exhaustion

of domestic remedies in Mexico in the present case will be analyzed in the report adopted by the IACHR on the merits of the dispute, in order to determine whether violations of the American Convention actually occurred.

b. Deadline for Presentation

22. In accordance with Article 46(2) of the American Convention, the unwarranted delay in reaching a decision through domestic remedies results in the inapplicability of the requirements of exhaustion and filing within six months from the date of notification of the final decision. Article 32(2) of the Rules of Procedure of the IACHR determine in that regard:

In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

23. The petition under review was lodged on May 10, 2000, within six months of the final judgment sentencing Mr. García Cruz and Mr. Sánchez Silvestre to three years in prison for carrying firearms. However, we know that the men were not released after having served their sentences because another action was in progress based on the same statement obtained in June 1997 while they were held incommunicado at the PGJDF with no legal counsel. The findings in the case show that from the date of the alleged torture to the date of filing of the complaint with the IACHR, the petitioners took a number of steps to move the investigation forward. Up until the date of adoption of this report, there is no indication that the inquiry into the allegations of torture within the domestic jurisdiction has been completed.

24. In the opinion of the IACHR, based on the facts described above, the petition was presented within a reasonable time frame.

c. Duplication of proceedings and res judicata

25. The case in the petition has no information whatsoever that might lead one to believe that this matter is pending resolution in another international forum or has been previously decided by the Inter-American Commission. The IACHR therefore concludes that the exceptions provided in Article (1) (d) and Article 47(d) of the American Convention do not apply.

d. Description of the allegations facts

26. The petitioners allege the illegal detention and torture of Mr. Juan García Cruz and Mr. Santiago Sánchez Silvestre, as well as the failure to investigate and punish those responsible for such acts. They also accuse the State of using confessions extracted under torture to condemn the said persons, first to three years imprisonment for carrying illegal firearms, and then to 30 years for homicide. According to the petition, in the first trial, they were denied the right to due process as they were not presumed innocent nor were they given a proper defense. For its part, the Mexican State alleges that the facts do not characterize potential violations of the American Convention, because it considers that Mr. García Cruz and Mr. Sánchez Silvestre were caught in

the act, that they had no injuries that might have been inflicted by torture, that their public defense was properly performed, and that the courts acted within the law at all times.

27. It is not appropriate to establish at this stage of the proceedings whether there was indeed a violation of the American Convention. For the purposes of admissibility, the IACHR must determine whether facts constituting a violation have been presented, as stipulated in Article 47(b) of the American Convention. The parameters for judgment on these grounds are different from the requirements for ruling on the merits of a report. The Inter-American Commission must conduct a *prima facie* evaluation to examine whether the report provides grounds for the apparent or potential violation of a right guaranteed by the American Convention. This is a summary analysis, which does not imply prejudice or advance an opinion on the merits of the case. The distinction between the review to determine admissibility and the review required to determine a violation is reflected in the Rules of Procedure of the IACHR, which clearly establish different stages for admissibility and merits.

28. The petitioners' allegations refer to facts, which, if true, constitute violations of the rights guaranteed by the American Convention and other international instruments. Despite the fact that the Mexican State alleges that there has been no violation, the information submitted indicates that the investigation into the allegations of torture that took place in 1997 has not been completed. The IACHR believes that the facts presented warrant closer and more comprehensive examination of the petition in the merits stage.

29. IACHR considers that the facts, if proven, constitute violations of the rights of Mr. García Cruz and Mr. Sánchez Silvestre guaranteed in Articles 5, 7, 8 y 25 of the American Convention, as well as in Articles 6, 8 and 10 of the Inter-American Convention to Prevent and Punish Torture.[FN12] The IACHR therefore considers that the petitioners have proven *prima facie* the grounds required in Article 47(b) of the American Convention.

[FN12] The Mexican State ratified the Inter-American Convention to Prevent and Punish Torture on June 22, 1987, and the Inter-American Convention on the Forced Disappearance of Persons on April 9, 2002.

V. CONCLUSIONS

30. The Inter-American Commission finds that it is competent to hear the merits of this case and that the petition is admissible under Article 46 and 47 of the American Convention. Based on the arguments in fact and in law presented above, and with no pre-judgment on the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible with respect to the alleged violations of the rights of Mr. Juan García Cruz and Mr. Santiago Sánchez Silvestre, protected under Articles 5, 7, 8 and 25 of the American Convention, and under Articles 1, 6, 8 and 10 of the Inter-American Convention to Prevent and Punish Torture;
2. To notify the parties of this decision;
3. To proceed to review the merits of the case; and
4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 22nd day of the month of October, 2003. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Robert K. Goldman and Julio Prado Vallejo, Commissioners.